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Fifty-sixth session

SUMMARY RECORD OF THE 1494th MEETING

Held at Headquarters, New York,
on Monday, 1 April 1996, at 10 a.m.

Chairman: Mr. AGUILAR

later: Mr. BÁN
(Vice-Chairman)

later: Mr. AGUILAR
(Chairman)

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Nigeria (CCPR/C/92/Add.1)

1. At the invitation of the Chairman, Mr. Yadudu, Mr. Otuyelu and Mr. Rindap (Nigeria) took places at the Committee table.

2. Mr. YADUDU (Nigeria) said that Nigeria was a responsible member of the international community which respected all international obligations it had entered into. In addition, the Nigerian Government had taken a number of steps to create an enabling environment for the extrajudicial recognition, promotion and enforcement of all rights enshrined in the Nigerian Constitution, and had also provided a forum for public education and dialogue regarding human rights issues.

3. He was glad of the opportunity to be able to highlight factors and difficulties that Nigeria had experienced in implementing measures designed to give effect to the rights recognized under the Covenant. The suggestions and recommendations of the Committee would be given the highest consideration.

4. Before responding to the specific questions posed by Committee members in the list of issues, he said that it would be useful to deal in general terms with the circumstances of the trial and execution of Mr. Ken Saro-Wiwa and others by the Ogoni Civil Disturbances (Special) Tribunal. Mr. Saro-Wiwa had been convicted as a result of the brutal murder of four prominent Ogoni chiefs on 21 May 1994 by rioting members of the youth wing of the Movement for the Survival of the Ogoni People (MOSOP). Under Mr. Saro-Wiwa's leadership, MOSOP had become a radical and violent organization that championed subversion and confrontation. The murdered chiefs had been characterized as paid agents of various oil companies and the Federal Government of Nigeria.

5. Following the civil disturbances of 21 May 1994, the Head of State, exercising powers conferred on him by the Civil Disturbances (Special Tribunal) Act, constituted the Ogoni Civil Disturbances (Special) Tribunal comprising two serving judges and a senior member of the armed forces. Under the Act, the Tribunal was empowered to try any person charged with certain offences and to impose any penalty provided for that offence in the Criminal or Penal Code. The Tribunal had sat for over eight months and had ultimately been satisfied that the prosecution had proved beyond reasonable doubt the charges that had been brought against the accused. Nine defendants, including Mr. Saro-Wiwa, had been found guilty of murder and sentenced to death; six had been acquitted.

6. He said that the judgements and records of proceedings contained a fair amount of testimony from all witnesses and from the accused persons who gave evidence. Based upon a thorough review and assessment of the prosecution's case read in open court, it was evident that the trial had been fairly conducted in accordance with the provisions of the Act. The accused had been given all the rights and every opportunity recognized by the Act, the 1979 Constitution and

other laws of the land to defend themselves in person or by counsel of their choice. While some had availed themselves of such opportunities, others had declined to do so. They had been tried under existing penal legislation, not a retroactive law, and by a duly established judicial tribunal.

7. Regrettably, counsel to some of the accused had chosen to abandon their clients halfway through the trial, and may even have encouraged some of the accused not to offer their own defence or to call witnesses. However, as required by Nigerian law, the Tribunal had appointed defence counsel for the accused following the withdrawal by their lawyers.

8. He pointed out that critics of the Nigerian judicial system had used double standards to judge the authorities. While having no qualms about accepting the jurisdiction of tribunals which tried drug traffickers, armed robbers and those suspected of fraud and other financial malpractice, they had berated a duly constituted tribunal which had tried people accused of civil and communal disturbances resulting in gruesome murder and destruction of property. He stated that the Ogoni Civil Disturbances Tribunal was not a court martial. It had been governed by due process of evidence and procedure. Its proceedings had been open and had been monitored by national and international journalists. Both local and international human rights groups had covered the proceedings. The accused had been granted all rights and privileges recognized under Nigerian laws. Above all, the same type of tribunal had operated in similar circumstances on several previous occasions in Nigeria.

9. The Tribunal was a duly constituted court permitted under the provisions of sections 30 and 33 of the Nigerian Constitution. The Act establishing it did not provide for its determination to be final or conclusive, as its findings and sentences were subject to confirmation and could be varied. Finally, he reminded the Committee that the actions of the accused had posed a serious threat to peace, order and good government both locally and nationally. Right to life, liberty and security of the person and right to a fair trial (articles 6, 7, 9 and 14 of the Covenant) (section I of the list of issues).

10. The CHAIRMAN read out section I of the list of issues concerning the initial report of Nigeria, namely: (a) the need for detailed information on the trial and execution of Mr. Ken Saro-Wiwa and other members of MOSOP, and how those judicial measures could be reconciled with the requirements of articles 6 and 14 of the Covenant; (b) the need for a description of the constitution, membership and jurisdiction of special and military tribunals and courts and the law and procedure applied by them in criminal matters. The Committee also wished to know under what circumstances, if any, special tribunals had jurisdiction over crimes allegedly committed by citizens or over civil crimes allegedly committed by military officials; (c) the scope of measures to investigate cases of summary executions, disappearances, torture, rape and other inhuman or degrading treatment or punishment, arbitrary arrests and detention of persons by members of the army and security forces, or paramilitary and other armed groups; what measures had been taken to bring those found responsible before the courts, to punish those proven guilty, and to prevent the recurrence of such acts; (d) the extent of measures to ensure a strict separation of the powers and the independence and impartiality of the judiciary, apart from the administrative steps referred to in paragraphs 89 to 95 of the report.

11. Mr. YADUDU (Nigeria) adding to what he had said earlier with regard to the Saro-Wiwa case, stated that the offence for which Mr. Saro-Wiwa and his co-conspirators had been charged was a very grievous one under the Criminal Code and the Civil Disturbances Act. They had been tried by a competent tribunal. They could have sought commutation of their sentences, but had chosen not to do so. In addition, the accused persons had been accorded the right to fair hearing under section 33 of the Nigerian Constitution, which was in every material respect consistent with article 14 of the Covenant.

12. As to the composition, membership and jurisdiction of special and military tribunals, he explained that a court martial was composed purely of military officers and their jurisdiction extended generally to members of the armed forces. However, since 1976, civilians suspected of participation in a coup d'état could be tried by a court martial. Apart from courts martial, the 1979 Constitution recognized a variety of other tribunals, established for different purposes and with divergent composition. Certain courts were entrusted with specialized jurisdiction to deal with some matters which the regular courts were perceived to handle inefficiently. Often such tribunals were headed by one or more serving or retired judges of the regular courts. They were empowered to try, under existing or newly created penal legislation, bank officials or customers accused of fraud or economic sabotage. Although the procedure applicable to them was governed by the Evidence Act or the Criminal Procedure Act, in practice some of the more dilatory legal procedures were often dispensed with.

13. Regarding measures taken to combat cases of summary executions, disappearances and torture, he said that citizens had rights which provided a shield against such abuses, as well as having access to remedies in cases of infringement. In the absence of any specific allegations, he could not comment on what steps may or may not have been taken to bring those responsible for such abuses before the courts.

14. Paragraphs 89 to 95 of the report clearly stated that sufficient safeguards for the independence and impartiality of the judiciary existed, and he saw no need to provide further clarification. The separation of powers stipulated under the 1979 Constitution was rigorously observed.

15. Mr. EL-SHAFEI said it was clear that, by sending such a high-ranking delegation, Nigeria had shown willingness to cooperate with the Committee and with the international community as a whole. Africa could not play a decisive role in world politics without the effective participation of Nigeria. However, he was extremely concerned by recent developments in that country.

16. The Nigerian report was far too general. States of emergency were referred to only in the abstract, without mention of exact dates or a list of the rights which had been derogated from during such periods. The statement in paragraph 32 that "the exercise of one's rights and freedoms shall be inseparable from fulfilment by the citizen of his obligations" appeared meaningless and should be clarified.

17. With regard to special trials which had taken place pursuant to the Civil Disturbances Act of 1987 as amended by the Special Tribunal Act of 1994, he

noted that a tribunal's decision was not subject to review by higher courts but only to confirmation by the Provisional Ruling Council. The Nigerian delegation was perfectly well aware that such a state of affairs violated article 14, paragraph 5, of the Covenant, since the Provisional Ruling Council was in no sense a judicial authority.

18. During the trial of Ken Saro-Wiwa and his associates, defence lawyers had been granted access to their clients but had never been allowed to spend any time alone with them. The accused had thus been denied the right to adequate facilities for the preparation of their defence and had not been allowed to communicate freely with their counsel; hence a violation of article 14, paragraph 3 (b), had occurred. The defence had also submitted two affidavits from prosecution witnesses who had claimed that security agents and others had bribed them to sign false statements. The Tribunal had refused to accept those affidavits without giving any reason. It would be useful to know whether any investigation had been conducted into the matter, and if not, why not. It seemed that, by refusing to admit the affidavits as evidence and thereby denying the accused to call prosecution witnesses, the Tribunal had violated article 14, paragraph 3 (e), of the Covenant.

19. He noted that defendants were said to have been physically mistreated, deprived of food and medical care, and denied visits by family members and legal counsel; Ken Saro-Wiwa had reportedly been manacled for a long period and beaten and kicked as well, despite his poor health. Such mistreatment violated articles 7 and 10 of the Covenant. Decree No. 12 of 1995 prohibited the courts from adjudicating cases relating to actions taken under or pursuant to decrees and edicts, which might well constitute interference in the administration of justice in Nigeria.

20. Mr. BHAGWATI expressed concern about two decrees in particular, No. 107 of 1993, the Constitution (Suspension and Modification) Decree, which effectively suspended the 1979 Constitution and gave the President the power to override its provisions, and No. 12 of 1994, the Federal Military Government Supremacy and Enforcement of Power Decree, under which the courts were precluded from inquiring into anything done under that or other decrees. The two decrees in question constituted a denial of the rule of law and violated article 2, paragraph 3, of the Covenant. Decree No. 2 of 1994, the State Security (Detention of Persons) Decree, contained Draconian provisions such as suspension of the right of habeas corpus and, in effect, conferred unlimited powers on the Government; under an October 1994 amendment to that decree, persons could be detained and kept incommunicado without any judicial recourse whatsoever. Under that decree, several persons were currently being held in Rivers State, and several newspaper groups had been banned.

21. Special tribunals were of two kinds, namely, those established under the Treason and Other Offences Decree, No. 1 of 1986, and those established under the Robbery and Firearms Special Provisions Decree, No. 5 of 1984, or the Civil Disturbances Decree, No. 2 of 1992, and it was unclear whether they followed the procedure of the civil courts. Their rulings were subject to approval by the competent authority, but it was not clear whether that meant judicial authority or that of the President of the State. If there was no right of appeal and no review by any judicial authority, the guarantees of the right to a fair trial

under articles 9 and 14 of the Covenant were being violated. Persons brought before special tribunals established under Decree No. 1 of 1986 were not allowed to choose their own legal counsel; they were represented by military lawyers provided by the tribunal. Furthermore, trials were not public or held before an independent, impartial tribunal, violating article 14 of the Covenant.

22. Lord COLVILLE said that the text of the judgement issued in the case with which the Committee was concerned extended the law of murder in a way that might be regarded as dubious, as the matter was one which should properly fall within the jurisdiction of an appellate court, and there was no appellate court. The defendants had been put to death without having had any right of appeal, a situation which violated the Covenant.

23. He pointed out that an analogous situation, involving murders in Ogoni lands, had arisen in a neighbouring municipality and was being handled by the ordinary civil courts, with the right of appeal and other rights guaranteed under the Constitution being observed. It was not clear why the one case should have been heard by the regular courts and the other by a special tribunal. It was also pertinent to ask whether the three or four other groups that were to be tried under the special tribunal in due course would also be denied the right of appeal and other rights. At the Port Harcourt hearings, the members of that tribunal had lodged throughout the trial in the same house as members of the prosecution team, a situation that was intolerable.

24. Ms. EVATT said that the report submitted by Nigeria was itself a source of concern, in that it did not adequately depict either the state of law in Nigeria or the de facto situation there, which was characterized by the derogation of rights and a state of emergency, with military decrees apparently undermining the country's Constitution. Under Decree No. 107, the Constitution was subject to suspension and modification; future decrees would be able to override it and eliminate judicial review. The Constitution no longer had primacy; in effect, unchecked legislative and executive power were vested in the Head of State. Under Decree No. 12 of 1994, the Government could exclude the courts' right to review the Government's actions. Constitutional guarantees of human rights were overridden, and habeas corpus had been suspended. It was against that background that the issues included under section I should be seen.

25. The report did not describe in any detail the creation and jurisdiction of the many tribunals. Paragraph 117 referred to them, but took no note of the Committee's comment that military tribunals should judge civilians only exceptionally and subject to the safeguards set forth in article 14, especially the right of appeal.

26. In the trial of Ken Saro-Wiwa, there had been no right of appeal, and consequently the defendants had had no means of determining whether the procedure had been proper or not. Allegations made to the Committee suggested that their rights had been infringed: they had not been informed of the charges against them for nine months, and they had been held incommunicado, in violation of articles 9 and 14 of the Covenant. Their access to legal advice had been restricted, in violation of article 14, and their counsel had withdrawn because of bias on the part of the court and communication between the court and the military officers investigating the case for the Government. The right to a

fair trial had thus been denied, and the defendants had been sentenced to death without appeal, in violation of articles 6 and 14. Furthermore, they had been unable to seek pardons or the commutation of their sentences, in violation of article 6, paragraph 4, of the Covenant. It would be of interest to know whether the Government intended to hold further trials before the special tribunal, with the same denial of rights as had characterized the Saro-Wiwa case.

27. Issue (c) had not been adequately answered. There appeared to be growing numbers of extrajudicial killings by State agents in Nigeria, as for example the eight persons who had been killed by the police in 1991. In that case, compensation had been offered to the families of the victims, which amounted to official acknowledgement of the criminal nature of the killings, but as yet no one had been prosecuted.

28. Mr. Bán, Vice-Chairman, took the Chair.

29. Mr. LALLAH stated that Commonwealth countries were familiar with a system of law and good government that fostered the preservation of human rights and democracy. In connection with the human rights situation in Nigeria, two basic points arose: the Government's decrees ousted the Constitution's guarantees of fundamental rights, and also ousted the courts' jurisdiction to inquire into the Government's actions. Under article 4 of the Convention, human rights might be abridged to ensure national security and public order, but only subject to limitations: the rights of accused persons must be safeguarded, especially in capital cases, as the Committee had held in a number of cases under the Optional Protocol. In the Saro-Wiwa case, various motions relating to witnesses for the defence had been denied, which was a very serious matter. The fact that police and judges had lodged under the same roof had inevitably made it impossible for the defence to feel that it was being dealt with fairly.

30. Since similar offences were dealt with by special tribunals in some cases and by the regular courts in others, it would be of interest to know who decided which cases would be heard by which courts and whether decisions were motivated by political considerations. The principle of equality before the law must prevail in all cases, especially capital cases. Further information about extrajudicial killings was needed.

31. Mr. Aguilar, Chairman, resumed the Chair.

32. Mr. KLEIN stated that while it was welcome news that Nigeria had accepted the Secretary-General's fact-finding missions and was determined to live up to its international obligations, the contents of the report were not fully satisfactory. The report did not provide a picture of the actual legal and social situation in Nigeria. The Constitution had been set aside by a number of decrees issued in the course of the past decade, and special tribunals had become part of the country's general judicial framework. Paragraph 7 of the report asserted that Nigerian law provided for remedies for persons who claimed that any of his or her rights guaranteed under the Nigerian Constitution had been violated, but that assertion was inconsistent with Decree No. 12 of 1994, under which the jurisdiction of the courts to challenge the Government's actions could be removed.

33. Paragraph 19 of the report stated that "for the purpose of realizing the provisions of the Covenant, the decisions of the Court referred to are not final. There are rights for the aggrieved party to appeal". A similar statement was contained in paragraph 107. He failed to understand how those statements could be made in view of the Robbery and Firearms Special Provisions Decree, No. 5 of 1984, the Treason and Other Offences Decree, No. 1 of 1986, and the Civil Disturbances Decree, No. 2 of 1987. It was clearly stated in all those cases that no right to appeal was recognized.

34. Similarly, it was difficult to see how the Government could state that remedies were available for violations of article 9 of the Covenant in the light of Decree No. 12 of 1994 and Decree No. 2 of 1984, which allowed detainees to be held incommunicado for indefinite periods, and an amendment of 1995 prohibiting courts of law from issuing orders to the authorities to produce detainees. Also, the terms of paragraph 90 of the report, dealing with the separation of powers and the independence of the judiciary, were totally lacking in credibility in view of Decree No. 5 of 1984 and Decree No. 2 of 1987, which provided that the composition of tribunals was to be decided by the Head of State.

35. Although the death penalty was not prohibited by the terms of the Covenant, it was the Covenant's clear purpose to restrict its application to the most serious crimes. In all capital cases, the procedure before the courts must be in strict conformity with the provisions of domestic and international law. In the case of Ken Saro-Wiwa, the State party had failed to show that Mr. Saro-Wiwa bore any direct responsibility for the deaths that had taken place during the riots, although he had been guilty of incitement to murder. He requested additional information regarding the number of death sentences handed down since the current Government had come to power, and how many extrajudicial executions were estimated to have occurred. The Committee had obtained information regarding a number of extra judicial executions and unlawful killings such as those reported to have occurred in May and June 1994 in a number of Ogoni towns and villages; it had also been reported that at that time a number of civilians had been assaulted or raped and that many homes had been destroyed.

36. In view of the numerous violations of the provisions of the Covenant, the Government should clearly indicate what urgent steps it had taken or was taking in order to restore a situation that was in conformity with Nigeria's human rights obligations, and what plans existed for the total or partial repeal of the decrees which he had mentioned.

37. Mr. POCAR said that the answers provided by the State party to the questions contained in the first part of the list of issues were not entirely convincing and did not allay all his concerns. He recalled that the Committee, in its 1984 general comment on article 14 of the Covenant, had stated that the existence of military or special courts which tried civilians presented serious problems for the independent administration of justice. The reason for the establishment of such courts was often to allow for the application of exceptional procedures which did not comply with normal standards of justice. The Committee had also stated that, when States parties decided that exceptional circumstances made it necessary to derogate from normal legal procedures, they should ensure that such derogations did not exceed those strictly required by

the exigencies of the situation. He had difficulty in seeing how the decrees establishing such tribunals in Nigeria were in conformity with the minimum guarantees as set out in article 14, such as the right to appeal. It was also most regrettable that in no case could the validity of any decision of the tribunals be inquired into be a court of law.

38. Although it was, of course, possible for States parties to derogate from certain of the obligations under article 14, it did not seem that any derogation as provided for by article 4 of the Covenant had been adopted by the State party. In addition, the decrees referred to exceptional circumstances without giving information as to any declaration of a state of emergency. In the Saro-Wiwa case, the Tribunal had stated that the very fact of its establishment presupposed the manifestation of certain criminal activities which fell outside the ordinary laws of the land. It had presupposed the existence of a state of emergency although such a state had not been officially declared. Even if a state of emergency was declared, certain provisions of the Covenant, such as those contained in articles 6 and 14, could not in any circumstances be suspended.

39. Mr. MAVROMMATIS welcomed the declared intent of the State party to give serious consideration to the outcome of its dialogue with the Committee, and hoped the the current discussions would assist the Government in taking decisions which were vital to respect for human rights.

40. He recalled that the special tribunals had been created by decrees at a time when the Constitution had been suspended; they had not been created by an act of parliament. He pointed out that ordinary crimes such as robberies should not be dealt with by such tribunals. He wondered whether the Tribunal which had tried the Ogoni cases had been a standing tribunal or had been set up on an ad hoc basis for that specific purpose.

41. It was important to emphasize that, if a death sentence was to be imposed, the case should be heard in a court of first instance and reviewed by a higher court which would consider both the trial itself and the sentence, and any application for pardon to the Head of State should be should be the third stage. Any death sentence imposed in the absence of such procedures violated the provisions of the Covenant. The State party should give urgent consideration to the measures necessary to rectify that situation, until such time as the Constitutional Court could give due consideration to the constitutionality of the tribunals. The existence of public executions in Nigeria was also a matter to be dealt with as quickly as possible.

42. Noting that a number of recent laws or decrees had been said to have superseded the Constitution, he recalled that the latter could be superseded only to the extent provided for by the Constitution itself. He hoped that when the situation in Nigeria returned to normal, the appropriate provisions to that effect would be incorporated in the Constitution.

43. Mr. PRADO VALLEJO recalled that the report of the State party should have contained information regarding the progress made and the difficulties encountered in the implementation of the rights contained in the Covenant.

Following the oral replies which had been provided to the Committee, there remained a number of concerns and points requiring clarification.

44. His first concern was the absence of a separation of powers in Nigeria, creating considerable difficulties in the application of the Covenant. No system of Government could be truly democratic in a country where human rights were not respected and where there was almost permanent repression. A system in which the Head of State governed by decree inevitably gave rise to considerable difficulties in terms of the balance between the executive, legislative and judicial branches of government and in terms of respect for human rights. There was no freedom of opinion; dissenters were immediately prosecuted and detained, and human rights activists were imprisoned.

45. It would clearly be inaccurate to claim that a period of transition to democracy had begun in Nigeria. That was clear from the absence of any legal recourse for those in detention, the current system of government by presidential decrees, the lack of freedom of expression, the closure and suspension of newspapers, and the particularly grave situation whereby civilians were judged by military tribunals. It was hard to see how there could be impartial tribunals when it was the Head of State who appointed as members of those tribunals persons chosen from among his political supporters, the accused were given no right to choose their own lawyers, hearings were held in camera, and there was no right of appeal. According to the State Security (Detention of Persons) Decree No. 2, accused persons could be held indefinitely and incommunicado, in violation of article 7 of the Covenant as well as of the right to liberty and security of person under article 9, paragraph 1. In the recent trial of Ken Saro-Wiwa and other activists, Nigeria had also failed to respect the minimum guarantees under article 14, paragraph 3, in passing sentences not in conformity with international standards. Death sentences should always be imposed only for the gravest of crimes and there should always be the possibility of an appeal, in keeping with article 14, paragraph 5.

46. He would also appreciate information as to whether any of the alleged cases of torture and any of the reported extrajudicial executions by security forces, especially in Ogoniland, had been investigated by the Government and what the results had been.

47. The Committee needed specific answers to all those questions, not just generalities.

48. Mr. BUERGENTHAL, agreeing that the report had little to do with reality in Nigeria at the moment, said in response to the delegation's request for an example of extrajudicial executions, that the trial and subsequent execution of Ken Saro-Wiwa and his fellow activists provided a perfect such example. All members of the Committee had pointed out what had been wrong with that so-called trial. Apart from the issue of who had appointed the presiding judge, a military officer - who necessarily responded to orders from the top - had been put in charge of the tribunal; and he would appreciate an explanation of how such a tribunal could in fact be impartial. Also, a trial without the possibility of appeal was not a real trial, and the delegation should comment on

how Nigeria reconciled the denial of appeal with articles 6 and 14 of the Covenant.

49. He would also like confirmation as to whether the State Security (Detention of Persons) Decree, No. 2 of 1984, in fact provided that the Government might detain without charge persons suspected of acts prejudicial to State security or harmful to the economic well-being of the country and whether, when invoked by the Vice-President, the decree suspended the detainees' civil liberties and precluded judicial review. If so, it was in violation of the Covenant. Also, he wished to know if Decree No. 11 of 1994 authorized the Vice-Chairman of the Provisional Ruling Council or the Commissioner of Police to detain persons for up to three months and whether Decree No. 14 of 1994 forbade courts to order the Government to produce prisoners in court, effectively suspending the right of habeas corpus. If so, both those decrees violated the Covenant. He also asked the delegation to confirm whether the Government routinely arrested and detained without charge leading human rights activists, as in the cases of Ransome-Kuti, Femi Falama and Dr. Ore Falomo, which, if true, would be in violation of the Covenant; and also whether the Government was still holding in detention several leading labour and pro-democracy activists, among them Fred Eno, Olu Akerele, Frank Kokori, Wariebi Kojo Agamene and others, which, again, would be in violation of the Covenant. Moreover, the politician, Chief Moshood K. O. Abiola, had been held in detention since 1993 and his trial for treason had been suspended indefinitely: there should be an explanation of how that could be reconciled with the Covenant.

50. Mr. BÁN said that there was very little self-criticism to be found in the report, and yet that was a very necessary process for all reporting States. Generally speaking, the real difficulties in the country had not been pointed out and, worse yet, the articles of the Covenant which the Committee had asked the Nigerian Government specifically to emphasize - articles 6, 7, 9 and 14 - had not been properly addressed. He was puzzled by the fact that while the report referred frequently to the 1979 Constitution, the Committee had been provided with only brief excerpts from a 1989 Constitution. In any case both Constitutions had been adopted prior to Nigeria's accession to the Covenant. It would be interesting to know what consideration had been given after June 1993 to Nigeria's obligations under the Covenant; and also whether the practice of governance by decree, which seemed to be the general rule in Nigeria, had been reconsidered after the Covenant's entry into force. The report stated (para. 5) that the provisions of the Covenant as enshrined in the Constitution could be invoked; yet the most important provisions of the Covenant had simply been set aside by decree.

51. He would like clarification as to whether tribunals operating under the Civil Disturbances Act were empowered to hear any case or whether the president and members of the tribunals were designated on an ad hoc basis; and what the criteria of appointment were. He wondered whether the special tribunals applied the substantive provisions of the ordinary Criminal Code and, if so, if they held to the provisions of the Code regarding penalties or were entitled to impose more severe penalties - for instance, death for an offence that did not normally carry that sentence. He would appreciate information on how many death sentences had been imposed and carried out in Nigeria during the period under consideration; and whether the number of offences carrying the death penalty had

decreased or increased since the entry into force of the Covenant. Agreeing with Mr. Mavrommatis regarding the barbarity of public executions, he asked what was the mode of execution and whether legal regulations determined whether an execution would be private or public.

52. Nigeria seemed to be operating under emergency legislation, but it was not clear whether a situation of emergency had ever formally been declared and if that had been done in accordance with the Covenant. Since there had been derogation from many of the rights that did not admit of derogation under article 4 of the Covenant, he asked whether the Government had given any consideration to which rights were not subject to derogation.

53. Mr. ANDO said that he shared all the concerns that had already been voiced regarding, for instance, the trial and execution of Ken Saro-Wiwa and his fellow activists and the particular circumstances affecting the independence of the judiciary in that case and in general and regarding the abolition of the rights of appeal and of habeas corpus. The Government had acted without reference to article 4 of the Covenant, which did allow derogations from some provisions of the Covenant. The delegation's replies to section I of the list of issues had not been fully convincing and he would like to know what justification it could offer on legal grounds for all the extra judicial executions in Nigeria. Since the report had not dealt directly with the articles of the Covenant specifically singled out for comment by the Committee, and since it had not addressed the difficulties in the country, he would like more information on both points. He would also like an explanation of why Nigeria had requested that its report should be considered on one day only.

54. Mrs. CHANET observed that the special tribunal which had tried Ken Saro-Wiwa and his fellow activists had been an ad hoc body set up for that specific kind of case under the Civil Disturbances Act. She agreed that it could not have acted impartially, emanating as it did from an emergency government acting under a situation of emergency and presided over by a member of the military, and that it was thus in violation of article 14 of the Covenant. The tribunal had had special jurisdiction over offences related to civil disturbances; and she asked how such a tribunal could be called upon to judge a fact qualified as murder. The special court in question had stated in its judgement that care must be taken not to confuse the offence of murder under the decree under which it was operating with the similar offence of murder under the Criminal Code. She would like some explanation of the different kinds of murder, and of whether the tribunal applied the provisions of the Criminal Code. Also, it was not clear whether the rules of criminal procedure had been established by decree or by the tribunal itself: that was an important point, because those rules had violated article 14 of the Covenant in the incommunicado detention and in the denial of access to a lawyer and of the right of appeal.

55. Regarding Chief Abiola and articles 9 and 14 of the Covenant, she would like to know on what grounds he was being held, given the Federal High Court ruling that his detention was illegal. Later that Court seemed to have reversed itself and ordered him arrested, yet a court could not review its own decision. If indeed a different court had reversed the Federal High Court ruling, she wondered if it been asked to do so by the Office of the Attorney-General.

56. Mr. BRUNI CELLI observed that Nigeria was not governed by its Constitution and laws but rather by the unilateral will of the Head of the State, who ruled by decree, and his decrees violated rights from which there could be no derogation and had the effect of modifying the Constitution, which, presumably, as supreme law of the land, had to be respected by both Government and people unless it was amended as specified in the Constitution itself. The same applied to the international instruments to which Nigeria was a party: the Government had to comply with its obligations to ensure that all its citizens enjoyed all the rights guaranteed in the Covenant. Surely Mr. Yadudu, as Legal Adviser to the President, would convey all the Committee's concerns to the Head of State: the problem of the special tribunals, the failure to respect the non-retroactivity of laws, the failure to inform accused persons of the charges against them, to provide access to lawyers and the right of appeal, and to ensure the minimum guarantees under article 14, paragraph 3. The Saro-Wiwa trial had been tainted by all those defects, and it had further violated article 6 of the Covenant.

57. He wondered whether that classic example of extra judicial execution was an isolated case. Other detainees were apparently awaiting judgement before similar courts, and he asked whether Nigeria would take the Committee's comments and all those considerations into account, and act upon them in a way that would benefit those others.

The meeting rose at 1 p.m.